IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 900 OF 2004

Shri Hindurao Shankarrao Ulape
& ors. ... Appellants
(Ori.Defendants)

V/s

Appaso Ramchandra Ulape & ors. ... Respondents
(Ori.Plaintiffs)

Mr. M.B. Baadkar for the appellants.

Smt. Shakuntala A. Mudbidri for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 4TH JULY, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur, dated 31.10.2003 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Kolhapur dated 3.5.1997 partly decreeing the suit for declaration but refusing the plaintiff's prayer for perpetual injunction against the defendants.

2. The plaintiffs filed the suit for declaration and injunction in respect of the suit property on the basis

of various aspects. The suit was contested by the defendants on the ground that the allegations made by the plaintiffs were not true and correct.

The learned Trial Judge, on the basis of available evidence on record, came to the conclusion that the defendants had proved that deceased Kondi only had adopted deceased Rau Ulape and further had proved that deceased plaintiff No.1 Ramu @ Ramchandra Ulape was legally adopted son of Rau Kondi Ulape. It was further held that, it was proved that 1/2 share of deceased Chandrabai w/o Krishna had developed upon the plaintiffs as the only heir and, as such, they were exclusive owners of the suit property. Further it was held that defendants had obstructed the plaintiffs' possession in the suit property. Defendants' contention that they were legal heirs of deceased Chandrabai came to be rejected. However, it was held that defendants failed to prove that the suit property was the joint family property of the parties. The plea of title of adverse possession raised by the defendants also came to be dismissed and, as such, the suit for declaration and ownership right came to be decreed. However, the suit for injunction of the defendants was dismissed on the ground that the issue regarding possession was decided

against the plaintiffs in earlier suit and it was seen that defendants came in possession in the year 1987 and under the circumstances, it was found necessary for the plaintiffs to seek possession in respect of those particular suit sheds from the defendants and hence the suit for injunction came to be dismissed.

3. The appeal was carried to the District Court. The learned Addl. District Judge, Kolhapur, after hearing both parties on merits and came to the conclusion that the findings recorded by the lower Court are legal and proper and dismissed the appeal with costs. Hence the present appeal.

4. At the outset, it may be noted that there is no substantial question of law involved in the dispute. The only question sought to be raised is to the effect that, whether the suit for declaration of title and preventive injunction to the suit property could be decreed as regards declaration without seeking relief of possession. In support of this contention, my attention was drawn to the provision of Sec. 34 of the Specific Relief Act. The proviso to Sec. 34 stipulates to the effect that no Court shall make any such declaration where the plaintiff, being able to seek further relief

than a mere declaration of title, omits to do so. However, in the present scenerio when we peruse the factual matrix of the issues involved in the appeal, it is quite clear that by virtue of earlier adjudication in R.C.S. No.453 of 1987, both the Courts below have found that prayer for injunction could not be decreed and, as such, it was rejected. Taking into consideration all the material aspects, I am of the considered view that the bar of proviso to Sec. 34 of the Specific Relief Act would not come in the way of the plaintiffs and, therefore, I hold that the suit was maintainable. In view of this position, there is no other substantial question of law in this appeal and the entire issues involved are the issues of fact which are properly appreciated by both the Courts below.

In the result, no interference by this Court is called for and, as such, the appeal stands dismissed with no order as to costs.

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